

**REMARKS**

Claims 1-22, 24-59, 61-80 and 84-92 are pending in this application. Claims 1-22, 24-59, 61-73, 76-78, 84, 87 and 88 have been withdrawn from consideration. By this Amendment, claims 1, 37, 74, 75, 76, 79, 85 and 89-92 are amended. Support for the amendments can be found, for example, in the specification and the claims as originally filed (see paragraphs [0027], [0030], [0046], [0047], [0061], [0069] and [0168] and claims 1, 14 and 37). No new matter is added.

In view of the foregoing amendments and the following remarks, reconsideration and allowance of the claims are respectfully requested.

**I. Claim Objections**

The Office Action objects to claims 74, 75, 79, 80 and 89-92 as depending from a withdrawn base claim (Office Action, page 2). By this Amendment, claims 74, 75 and 79 are amended to obviate the objection.

Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

**II. Rejection Under 35 U.S.C. §112**

The Office Action rejects claims 74, 75, 79, 80, 85, 86 and 89-92 under 35 U.S.C. §112, second paragraph as to the recitations "organic coloring agent" and "free of free titanium dioxide" (Office Action, page 3). This rejection is respectfully traversed.

With respect to the recitation of "organic coloring agent," claims 1, 37, 76 and 85 are amended to obviate the rejection, as shown above. With respect to the recitation of "free of free titanium dioxide," claims 89-92 are amended to recite "free of unbonded titanium dioxide" to further clarify the features recited in those claims. The recitation "free of unbonded titanium dioxide" is meant to exclude unbonded titanium dioxide from the compositions recited in claims 89-92, but it is not meant to exclude compositions that include

bonded titanium dioxide, or titanium dioxide in combination with another substance, such as a mica substrate coated with titanium dioxide (see specification, paragraphs [0061] and [0069]).

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

### **III. Rejections Under 35 U.S.C. §103**

#### **A. Okada, Suzuki, Yau, Giron, Chapman and Herbst**

The Office Action rejects claims 74, 75, 79, 80, 85, and 86 under 35 U.S.C. §103(a) over U.S. Patent No. 5,463,009 to Okada et al. ("Okada") and U.S. Patent No. 6,759,052 to Suzuki et al. ("Suzuki"), in view of U.S. Patent No. 6,109,921 to Yau ("Yau"), and in further view of U.S. Patent Application Publication No. 2003/0067545 to Giron et al. ("Giron") and U.S. Patent No. 6,121,192 to Chapman et al. ("Chapman") and Herbst et al. (Industrial Organic Pigments, 1993) ("Herbst") (Office Action, page 4). This rejection is respectfully traversed.

Claim 74 recites, *inter alia*, "A method for making up dark skin, comprising applying to the skin at least one composition, wherein ...the composition comprises... at least one organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm, at least one mineral pigment selected from the group consisting of yellow, red and brown metal oxides, and reflective particles comprising at least one nacre..." (Emphasis added). Claims 75, 79 and 85 recite similar features. For at least the reasons presented below, Okada, Suzuki, Yau, Giron, Chapman and Herbst would not have rendered obvious each and every feature of claims 74, 75, 79 and 85.

Okada is directed to cosmetics containing fluorine-modified silicone (Okada, col. 1, lines 7-12 and Office Action, page 5). Okada lists various components that can be added to its compositions, such as pigments, perfumes, thickeners and surfactants (Okada, col. 5, lines

25-44). As pigments, Okada specifically discloses the use of red, yellow and black iron oxides (Okada, col. 5, lines 25-44 and Table 2). However, contrary to the assertion made by the Office Action, Okada does not disclose a composition comprising at least one organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm, as recited in claims 74, 75, 79 and 85 (Office Action, page 9).

In particular, although Okada generally discloses use of organic pigments and dyes, there is nothing in Okada that discloses an "organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm," as recited in claims 74, 75, 79 and 85 (see Okada, col. 5, lines 25-49). Put differently, one of ordinary skill in the art, presented with the disclosure of Okada, would have understood that cosmetics containing fluorine-modified silicone can optionally include pigments, such as red, yellow and black iron oxides. However, the skilled artisan would have had no reason to further include an organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm, as recited in claims 74, 75, 79 and 85, without the benefit of Applicants' specification.

Suzuki, Yau, Giron, Chapman and Herbst do not remedy the above deficiencies of Okada. In particular, Suzuki merely discloses a liquid cosmetic comprising iron oxide coated titanated mica (Suzuki, col. 22, Example 32 and Office Action, page 6). Yau is directed to a method of teaching and practicing cosmetology techniques on a mannequin (Yau, col. 1, lines 18-24 and Office Action, page 6). Giron discloses methods for acquiring images of portions of the human body (Giron, paragraph [0003]). Chapman is applied as disclosing methods for determining CIELAB color coordinates; and Herbst is applied merely to disclose advantages of organic pigments (Office Action, page 7).

As evidenced by the data in the Declaration previously filed on April 28, 2009 ("Declaration"), the claimed composition and method yields unexpected results over prior art compositions, which do not include both: (1) the claimed coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm; and (2) the claimed reflective particles. As shown in the Declaration, the claimed composition achieves a remarkable uniform and natural appearance on test subjects with dark skin, unlike the composition of the comparative example that imparts a grey or ashen appearance on the test subjects' skin. Similar to Okada, the comparative example discussed in the Declaration does not contain an "organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm." Accordingly, Applicants maintain that Okada also fails to achieve or appreciate the advantages of the claimed composition, as evidenced by the Declaration.

Based on the above, Okada, Suzuki, Yau, Giron, Chapman, and Herbst would not have rendered obvious each and every feature of claims 74, 75, 79 and 85. Claims 80 and 86 depend from claims 79 and 85 and, likewise, also would not have been rendered obvious by the applied references, for at least the reasons set forth above, as well as for the additional features they recite.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**B. Okada, Suzuki, Yau, Giron, Chapman, Herbst and Fornay**

The Office Action rejects claims 89-92 under 35 U.S.C. §103(a) over Okada and Suzuki, in view of Yau, and in further view of Giron, Chapman, Herbst and Fornay (African-American Woman's Guide, 2002) ("Fornay") (Office Action, pages 9-10). This rejection is respectfully traversed.

The above discussion with respect to Okada, Suzuki, Yau, Giron, Chapman and Herbst applies here.

The Office Action applies Fornay as addressing additional features recited in dependent claims 89-92. However, regardless of its actual disclosure, Fornay does not cure the deficiencies of Okada, Suzuki, Yau, Giron, Chapman and Herbst with respect to claims 74, 75, 79 and 85.

Based on the above, Okada, Suzuki, Yau, Giron, Chapman, Herbst and Fornay would not have rendered obvious each and every feature of claims 74, 75, 79 and 85. Claims 89-92 depend from claims 74, 75, 79 and 85 and, likewise, also would not have been rendered obvious by the applied references, for at least the reasons set forth above, as well as for the additional features they recite.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**C. Simon, Okada, Yau, Giron, Chapman, Herbst and Fornay**

The Office Action rejects claims 74, 75, 79, 80, 85, 86 and 89-92 under 35 U.S.C. §103(a) over U.S. Patent No. 6,451,294 to Simon ("Simon") in view of Okada and Yau, and further in view of Giron, Chapman, Herbst and Fornay (Office Action, page 10). This rejection is respectfully traversed.

The above discussions with respect to Okada, Yau, Giron, Chapman, Herbst and Fornay apply here.

The Office Action applies Simon as addressing additional features recited in claims 74, 75, 79 and 85. Thus, Simon does not cure the deficiencies of Okada, Yau, Giron, Chapman, Herbst and Fornay with respect to claims 74, 75, 79 and 85.

More specifically, Simon merely discloses a makeup having a first goniochromatic pigment and a second monochromatic pigment and, thus, would not have rendered obvious,

in combination with Okada, Yau, Giron, Chapman, Herbst and Fornay, a composition having: (1) at least one organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm; (2) at least one mineral pigment selected from the group consisting of yellow, red and brown metal oxides; and (3) reflective particles comprising at least one nacre, as recited in claims 74, 75, 79 and 85, (Simon, col. 1, lines 13-16).

Based on the above, Simon, Okada, Yau, Giron, Chapman, Herbst and Fornay would not have rendered obvious each and every feature of claims 74, 75, 79 and 85. Claims 80, 86 and 89-92 depend from claims 74, 75, 79 and 85 and, likewise, would not have been rendered obvious by the applied references, for at least the reasons set forth above, as well as for the additional features they recite.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

#### **IV. Double Patenting**

The Office Action rejects claims 74, 75, 79, 80, 85, 86 and 89-92 on the ground of nonstatutory obviousness-type double patenting over claims 7 and 39-41 of Simon in view of Okada, Suzuki, Yau, and in further view of Giron, Chapman, Herbst and Fornay (Office Action, page 13). This rejection is respectfully traversed.

The above discussion with respect to Simon, Okada, Yau, Giron, Chapman, Herbst and Fornay applies here.

For at least the reasons set forth above, Simon, Okada, Yau, Giron, Chapman, Herbst and Fornay would not have rendered obvious each and every feature of claims 74, 75, 79, 80, 85, 96 and 89-92. Furthermore, claims 7 and 39-41 of Simon would also not have rendered the claimed invention obvious because these claims do not recite the claimed "organic coloring

agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm," as recited in claims 74, 75, 79 and 80.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**V. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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**Attachments:**

Petition for Extension of Time  
Request for Continued Examination  
Amendment Transmittal

Date: June 1, 2010

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